WARRANT—DIRECTION TO ARREST BY TELEPHONE.—The possession by an officer of a warrant is held, in *McCullough* v. *Greenfield*, (Mich.), 62 L. R. A. 906, not to justify an arrest of the accused by the police department of another town, under direction by telephone to it by the officer holding the warrant.

STREET CARS—ADMISSIBILITY OF COMPANY'S SCHEDULE AS TENDING TO SHOW RATE OF SPEED AT TIME OF ACCIDENT.—In the trial of cases of personal injuries inflicted by street cars, the speed of the car at the time of the accident is often the main question at issue. In a case recently tried in the Circuit Court in the city of Richmond, Judge Scott presiding, the court, after the introduction of an eye witness, who testified that the car in question was moving at a rate exceeding that allowed by the city ordinance, admitted the schedule of the company, which showed that it was necessary to propel the car at an unlawful rate of speed in order to keep the schedule. The case relied on by counsel was *Central Ry. Co.* v. *Allmon*, 147 Ill. 471, in which the court said: "But proof of the schedule time, fixed by the defendant for the passage of its cars over a specified distance, was not introduced for the purpose of showing that the defendant had been propelling its cars at an excessive rate of speed on other trips than the one in question, but for the purpose of showing the average rate of speed as a basis of comparison with the rate of speed at which the car colliding with the buggy was traveling. If the average rate of speed fixed by the schedule of the company was excessive in view of the stops necessary to be made on the route, then the company would be responsible for an accident which occurred because one of its servants was speeding the car in conformity with its own schedule."

KEEPING JURY TOGETHER—SECTION 4025 OF CODE.—The case of *Johnson* v. *Commonwealth*, 46 S. E. 789, already reported in the May number of this volume, p. 43, is an instance of how strictly the courts construe statutes governing criminal cases. Section 4025 of the Code, as amended by Acts 1893-'4, p. 223, provides: "In any case of felony, where the punishment cannot be death or confinement in the penitentiary for more than ten years, the jury shall not be kept together unless the court shall otherwise direct." This was a case in which the accused was indicted in separate counts, for (1) forging and (2) uttering a writing purporting to be a will. The court held that, although each felony is charged in a separate count of the same indictment, and the jury finds a verdict upon each count separately, still the one indictment makes but one case, in which it is possible for the jury to find upon the two counts, taken together, a greater punishment than ten years' imprisonment, and the jury must, therefore, be kept together.

In the prosecution of felonies referred to in this section, it must affirmatively appear from the record that the jury when not in the presence of the court were kept in the custody of the sheriff or other proper officer. *Barnes'* case, 92 Va. 795, 803; but where the record shows that at the be-

ginning of the trial of a criminal case, all the officers in charge were duly sworn with the usual oath to keep the jury during the trial when absent from the court, it is unnecessary to show that such oath was administered upon each adjournment. *Reed's Case*, 98 Va. 818. It is believed that the rule of *Johnson's Case, supra*, has not been generally observed by our trial courts in criminal cases, and the attention of the bench and bar is called thereto.

The early cases held that separation *per se* annuls a verdict. I *Va. Cas.* 271, *Overbee's Case*, 1 *Rob.* 756. But the doctrine at present is that the separation out of the custody and control of the officer is *prima facie* sufficient to vitiate a verdict; and it is incumbent upon the Commonwealth to refute that presumption by disproving all probabilities or suspicions of tampering. *Philip's Case*, 19 Gratt. 540, *Barnes' Case*, 92 Va. 803. The object of the provision for keeping the jury together is evidently to prevent tampering; and yet it is generally held that in empanelling a jury, there is no necessity to keep jurymen who have been selected and sworn together and separate from other persons, under charge of the sheriff, until the whole number shall be selected and sworn. *Tooel's Case*, 11 Leigh, 714, *Dilworth's Case* 12 Gratt. 705, 17 *Am. & Eng. Encyc. Law* (2nd ed.), 1223. It would seem that if, as often happens in the trial of murder cases, several days are consumed in procuring a jury, the very best opportunity is offered the sheister or other conscienceless individual to bring his subtle influence to bear. Just why members of the jury should be so carefully guarded from outside influence after the panel is completed, while no such precaution is taken beforehand, does not clearly appear. They are certainly not more immune against the poisonous virus before than after the completion of the panel.